



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

August 18, 2003

Ms. Marvalette Hunter  
Project Director  
Dominion Community Development Corporation, Inc.  
1102 Pinemont Drive, Suite B  
Houston, Texas 77018

OR2003-5749

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186369.

The Dominion Community Development Corporation, Inc., ("DCDC") received a request for the "approved organization's application and any supporting documentation," any and all "documentation or letter(s) issued by the IRS for public inspection," copies of the DCDC's "Form 990 or Forms 990-EZ for your last 3 most recent taxable years," DCDC's mission statement, and the minutes of board meetings for the last two years. You contend that DCDC is not a "governmental body" under the Public Information Act (the "Act") and therefore, DCDC's records are not subject to required public disclosure under the Act. *See* Gov't Code § 552.003(1) (defining "governmental body" for purposes of the Act). We have considered your arguments. Further, we have reviewed the additional information you submitted in response to our letter of July 23, 2003. *See* Gov't Code § 552.303(b), (c). Finally, we have considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).<sup>1</sup>

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<sup>1</sup>We note that the requestor has asked for our assistance in enforcing section 6685 of title 26 of the United States Code Annotated as amended by the Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996). This office has no authority to enforce the Taxpayer Bill of Rights 2.

The Act generally makes public the records of governmental bodies. Gov't Code §§ 552.001, .003, .021, .221. The Act defines "governmental body" in pertinent part as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

*Id.* § 552.003(1)(A)(xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). Thus, DCDC would be considered a governmental body subject to the Act if it spends or is supported in whole or in part by public funds.

The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.--Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue in determining whether certain private entities are governmental bodies under the Act is whether they are supported in whole or in part by public funds or whether they expend public funds." Attorney General Opinion JM-821 at 2 (1987).

When considering the scope of the definition of "governmental body" under the Act, this office has distinguished between private entities receiving public funds in exchange for specific, measurable services and entities receiving public funds as general support. *See* Open Records Decision Nos. 602 (1992), 228 (1979) (private, nonprofit corporation, with purpose of promoting the interests of the area, that received general support from City of Fort Worth was governmental body).

You inform us that DCDC received a \$40,000 grant from the University of Houston (the "University") for the year 2003, which was used to support DCDC's "Homebuyer Counseling and Education Program." As the University of Houston is a governmental subdivision of the state, DCDC thus spends or is supported in whole or in part by public funds. *See* Gov't Code § 552.003(1)(A)(i), (xii), (5). You do not inform us that DCDC provides the University specific, measurable services in exchange for this grant. Thus, we determine that DCDC is a governmental body since it receives public funds from the University in support of its "Homebuyer Counseling and Education Program." *See* Open Records Decision No. 602 at 5 (1992). Consequently, DCDC's records that are related to those parts of DCDC's operations that are directly supported by the University are subject to the Act as public information. *See id.*; *see also* Gov't Code §§ 552.002(a), .006, .021.

In regard to the requested information, we note that the district has not sought an open records decision from this office within the ten business day time period as required by subsections 552.301(a)-(b), nor provided this office with any of the documents specified in subsection 552.301(e) within the fifteen business day time period required by subsection 552.301(e). *See* Gov't Code § 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the information, we have no basis for determining whether or not the requested information relates to the part or section of DCDC that is subject to the Act. Thus, under section 552.302, we have no choice but to order the release of any information responsive to the immediate request to the extent these records relate to those parts of DCDC's operations that are directly supported by the University. If you believe such information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Maverick F. Fisher".

Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/jh

Ref: ID# 186369

c: Mr. Michael J. Fortier  
5218 Founders Way Court  
Houston, Texas 77091